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THE SUPREME COURT OF

WESTERN AUSTRALIA

CIV 1106 of 2022

VIVIEN JIT SIEN YAP
and
EMPIRE SONS (AUSTRALIA) PTY LTD
T/AS RAY WHITE (DALKEITH CLAREMONT)

and

SANDI MATIC

SOLOMON J

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON MONDAY, 14 FEBRUARY 2022, AT 10.37 AM

MR M.L. BENNETT appeared for the plaintiffs.

MR S. MATIC appeared in person.

THE ASSOCIATE: In the Supreme Court of Western Australia, calling civil matter 1106 of 2022, Vivien Jit Sien Yap & Anor v Sandi Matic.

BENNETT, MR: If it please your Honour I appear on behalf of the plaintiffs.

SOLOMON J: Yes. Thank you, Mr Bennett. I see there's no appearance here for the defendant. I apologise for the late start; I was reading the - - -

BENNETT, MR: New affidavit.

SOLOMON J: - - - affidavits you filed this morning.

BENNETT, MR: Yes.

SOLOMON J: As I understand it, one is an affidavit of service.

BENNETT, MR: That's from Ms Harrison, yes.

SOLOMON J: I'm sorry?

BENNETT, MR: Ms Cheryl Harrison.

SOLOMON J: Yes. And that's a fairly unremarkable affidavit of service.

BENNETT, MR: Except that the defendant didn't admit his identity, and - - -

SOLOMON J: He said he didn't want to be served.

BENNETT, MR: Yes. (indistinct) the precaution of providing some photographs and – to Ms Harrison. And then Ms Border affirms an affidavit simply because Mr Mead didn't correctly swear his affidavit.

SOLOMON J: Yes.

BENNETT, MR: And we've – we undertake - - -

SOLOMON J: I see – I will come to that. So these are photographs. I'm just trying to find – just bear with me, Mr Bennett. All right. So the photographs are photographs not of the service, obviously, but just of the defendant provided by - - -

BENNETT, MR: Facebook downloads. Yes

SOLOMON J: - - - your office so that the (indistinct) server could be sure of who the person was.

BENNETT, MR: Yes.

SOLOMON J: Yes. I understand. Okay. Right. As I read it, he didn't deny being Mr Matic, he just said he didn't want to be served.

BENNETT, MR: That's right.

SOLOMON J: Yes. All right. Thank you. And - - -

BENNETT, MR: I can say, haven spoken personally to Ms Harrison, she served him at the address of the house in Mt Claremont.

SOLOMON J: Right. Thank you. And with Ms Border's affidavit – or annexing the affidavit to – draft affidavit of Mr Mead.

BENNETT, MR: He actually swore it, and we could have asked for it to be received, despite the irregularity. You will see on page 8 of Ms Border's affidavit that he swore it in front of a JP, Judith Hobson, in Braidwood, New South Wales, this morning.

SOLOMON J: Yes. How does it - - -

BENNETT, MR: But it - - -

SOLOMON J: - - - how is that not in compliance? I just don't know.

BENNETT, MR: If you go back to page 6 of Ms Border's affidavit - - -

SOLOMON J: Yes.

BENNETT, MR: - - - neither he nor the person who witnessed the affidavit swore – signed it at the bottom of each page.

SOLOMON J: All right. Well, I mean, I'm happy to receive Ms Border's affidavit and to take account of what's in there including what Mr Mead has to say. I think, for the same of completeness, Mr Bennett, if you could have Mr Mead do it again and then - - -

BENNETT, MR: You will see from Ms Border's affidavit that Mr Mead's arranged to - - -

SOLOMON J: Yes, he's arranged - - -

BENNETT, MR: - - - to re-swear that tomorrow morning - - -

SOLOMON J: Yes, I understood.

BENNETT, MR: - - - in Sydney.

SOLOMON J: Yes. That I knew. So if that could happen, that would be appreciated. What I really wanted to ask you about, though – as soon as I've got it marked up electronically is my understanding of the critical aspects of Mr Mead is that, first of all, he swears to the accuracy of the note that is contained in the previous affidavit.

BENNETT, MR: Yes.

SOLOMON J: I'm just looking for that in particular.

BENNETT, MR: That's at paragraph 8 on page 8.

SOLOMON J: Seven. I made a record. It's a true copy of the record of my telephone conversations. Yes. And then the other point that I noted was that there was a further conversation, I think, on the 8th.

BENNETT, MR: Yes.

SOLOMON J: Is that right? The 8th. Which was recorded. Yes. The 8th. That's at paragraph 10. Now, sorry, before we get – let me start that again. In that conversation on the 8th, of which there is now a transcript, Mr Matic says that he made a recording of the previous conversations but declined to provide a copy of it. Is that right? Have I understood that correctly? I only read it very quickly.

BENNETT, MR: I'm sorry, could you ask that again?

SOLOMON J: I understood from the transcript of a conversation of the 8th that Mr Matic told Mr Mead that he had recorded the previous conversation but that he declined to provide a copy of the recording.

BENNETT, MR: I think that's right, yes.

SOLOMON J: Right. And the other thing of significance, as I understand it – or as I noted it – was that Mr Matic denies that he said things in the previous conversation that form the basis of the injunction, essentially.

BENNETT, MR: Yes.

SOLOMON J: Yes.

BENNETT, MR: That's on page 22. He says:

> I didn't do anything like that. I've got no idea what you're talking about.

SOLOMON J: Yes. And then he says that – suggests that Mr Mead had lost his mind, as I recall.

BENNETT, MR: Yes.

SOLOMON J: So the – all we know of Mr Matic's position is that he didn't wish to be served and that, in a conversation with Mr Mead, he denied that he had said the things that – the subject of the complaint.

BENNETT, MR: That's right.

SOLOMON J: Yes. All right. And I - - -

BENNETT, MR: And he said that after he had been told by Mr Mead that Mr Mead was recording this call.

SOLOMON J: Yes.

BENNETT, MR: Yes.

SOLOMON J: All right. What would you like to do, Mr Bennett?

BENNETT, MR: Your Honour's made an order until further order.

SOLOMON J: Yes.

BENNETT, MR: I would think that your Honour needs to make no order today. We will take steps preparing a statement of claim on wait and see if Mr Matic files an appearance. Your Honour might want to relist the matter – this came to your Honour as a duty judge – might want to either adjourn the matter and we will list it before a Registrar or adjourn the matter and we can write to the associate to his Honour in charge of the CMC list and ask because it's an injunction matter the matter be admitted into a judge's CMC list, and - - -

SOLOMON J: Yes. I'm told I can do that.

BENNETT, MR: I'm sure your Honour can do almost anything.

SOLOMON J: We've just got an email to say Mr Matic is here, in the building, but he's running late. So what we might do is just stand the matter down but - - -

BENNETT, MR: Just - - -

SOLOMON J: Are you Mr Matic? Yes. Please come forward, Mr Matic. Right. So, Mr Matic, you're appearing on your own behalf?

MATIC, MR: Yes. Yes, your Honour.

SOLOMON J: Yes. And you've been served with the papers in relation to the orders that I made on Friday?

MATIC, MR: Yes. They were dropped off on the floor while cleaners were at home.

SOLOMON J: I'm sorry?

MATIC, MR: They were dropped on the front step as the cleaners were at home, so I wasn't – yes. Handed them to me.

SOLOMON J: You have them. You're aware of them.

MATIC, MR: I've got them, yes. Yes, that's right.

SOLOMON J: Yes. And you're aware of the orders that have been made?

MATIC, MR: I've not had a chance to get legal advice. I have looked through it, but I don't really understand what it's - - -

SOLOMON J: Right. Are you in - - -

MATIC, MR: - - - understand what it's about. I don't really understand what the order is.

SOLOMON J: Right. Are you intending to get legal advice?

MATIC, MR: Depending on how this goes, I guess.

SOLOMON J: All right. Well, I made an order on – the orders I made on Friday were to stand until further order. That is because you weren't there, and I don't know what your version of the events is. But on the material before me I made an interim order. I was persuaded to make an

interim order until we could sort this out with both parties.

That order stands until further order, which means if I don't make any order today it will continue. What is being proposed by Mr Bennett before you got here was that I don't make any order today, but that – in relation to the injunction, that stays on foot, which means that the orders made about you will remain for the time being, but we will program the matter to be litigated or proceed in the usual way; that is, the plaintiff will file a statement of claim, you will file a defence and it will be managed in the usual way. But, throughout that time, the injunction will remain.

MATIC, MR: I've – your Honour, I'm still not understanding what the actual order is or what statement of claim. Because everything is done on a hypothetical event happening in the future, and it's (indistinct) all fabricated. I've actually got a recording of the conversation that Mr Angus is referring to. None of those things that he noted in the letter that were sent to Mrs Yap were ever, ever said. So I've got no idea what this is about.

SOLOMON J: Right. Have you provided a copy of that recording to the plaintiff's lawyers?

MATIC, MR: No, I haven't. And no-one's even contacted me apart from something being dropped on a door step, nor did I know there was anything happening on Friday.

SOLOMON J: Right.

MATIC, MR: This is all, sort of, come about as I sent a letter of dispute outlining a few items back in October - - -

SOLOMON J: Yes, I've seen your - - -

MATIC, MR: Yes. So - - -

SOLOMON J: - - - correspondence.

MATIC, MR: - - - it's been – I don't understand – they've not sent anything back. And, all of a sudden, there's an injunction.

SOLOMON J: All right. Well, Mr Matic, the position is this; you're quite entitled to feel aggrieved by the

conduct of the plaintiff and – in relation to the sale of a property; that is really not the issue I'm dealing with.

MATIC, MR: I understand.

SOLOMON J: The issue I'm dealing with is a threat – an alleged threat by you to disrupt home opens and to say things about the plaintiffs that they are concerned will damage their reputation and their economic interests. That's all quite independent of your complaint against the way they conducted the sale of your property, and you're quite entitled to progress that complaint in whatever wat you think appropriate.

The only thing before me is your threat and - - -

MATIC, MR: Alleged threat.

SOLOMON J: The alleged threat, I understand that, and on the basis that I have sworn evidence that you made that threat, I've made the interim orders. Now, if you would like the injunction to be lifted, I'm happy to program the hearing for the injunction and give you an opportunity to file an affidavit if you wish – with legal advice, of course – where you consider your version of the events, and then we will hear it and decide whether the injunction should continue. So one of the – it seems to me that on the basis of what you've said today, I need to ask you do you object to the injunction and the orders made against you in relation to the alleged threat?

MATIC, MR: Can I just answer that slightly differently? Because I don't even consent to the name that it's written on.

SOLOMON J: I'm sorry?

MATIC, MR: I don't consent to being referred to as someone all in capital letters or being governed by these policies.

SOLOMON J: Mr Matic; first of all, could – how is your surname pronounced? Matic or Matic?

MATIC, MR: Matic.

SOLOMON J: Matic. Mr Matic, I have to say, I didn't understand what you just said. What is it you're objecting to?

MATIC, MR: My name's Sandi Matic, I'm a beneficiary of the Sandi Matic Trust. I'm a living man, and I actually do not consent to being governed.

SOLOMON J: To being governed?

MATIC, MR: Or being referred to as all capital letters name.

SOLOMON J: Well, let me take one of those things at a time. I don't understand what you mean by you object to being governed. What do you mean by that?

MATIC, MR: Well, my name's all spelled all in lower case, but in upper case letters I'm not a person, I'm a living man.

SOLOMON J: You're not a – all right. Let me just take each of those things at a time. Are you saying that your name in the proceedings has been spelled incorrectly?

MATIC, MR: Well, spelled in – written in capital letters, which is my person.

SOLOMON J: So are you talking about the writ of summons and the other court documents? In the writ of summons and, presumably, in the other court documents, it's not quite – in the writ of summons, Sandi is spelled with a capital S then non-capitalised, then your surname is spelled in capitals. And the other court documents, looking very briefly, both your names are spelled in capitals. Is that the objection you're making? That you don't wish your name to be spelled in capitals?

MATIC, MR: Well, I – that's two different entities. I'm a living man, that's a person.

SOLOMON J: Right. I'm not sure I've understood you're saying is the difference between a living man and a person, Mr Matic.

MATIC, MR: I'm not sure how that would be possible, but living man is a living man, governed under common law, person is an entity created by, essentially, a government. Is that not the case?

SOLOMON J: Well, you're named as a – you're there as the defendant as a person or a living person.

MATIC, MR: I'm a person. I'm a living man, not a person. A person's the – an entity or a unit or a corporation. I'm not a person. I'm - - -

SOLOMON J: A living individual.

MATIC, MR: - - - I'm a man. Yes.

SOLOMON J: Okay. You're named there as an individual, not as a corporate entity.

MATIC, MR: Not in capital – it's not in capital letters, normally.

SOLOMON J: Well, I don't think – I think that's just the form the court documents take, Mr Matic. I don't think anything sinister was intended by that.

MATIC, MR: I don't think anything sinister. It's just, obviously, it's being governed by, I guess, the government laws.

SOLOMON J: Would you prefer your name to be written without capitals?

MATIC, MR: I just don't consent to being governed by whatever – I don't even know what it is. But - - -

SOLOMON J: Well, let me tell you what it is. It's an order of the Supreme Court that has jurisdiction over these sorts of matters. And the Supreme Court has the power to make orders over you as a living individual or person, whatever you are. The Supreme Court has the power to make these orders. If you object to the orders, the court is very happy and, indeed, anxious to give you an opportunity to put your version of the events to the court. Do you understand that?

MATIC, MR: Somewhat, yes.

SOLOMON J: Okay. So let's come back to the first – the question I was exploring, Mr Matic. And that is do you object to the continuation of the orders that I made on Friday?

MATIC, MR: Yes.

SOLOMON J: Right.

MATIC, MR: Under duress I'm answering that question.

SOLOMON J: I'm sorry.

MATIC, MR: I'm answering that question under duress, because my statement wasn't, I guess, accepted by the court. But yes, I do object.

SOLOMON J: Right. I'm not sure what you mean by duress and that your statement wasn't accepted. What – what statement is it that I haven't accepted?

MATIC, MR: That my name is Sandi Matic and I'm a beneficiary of the Sandi Matic trust and I do not consent to being governed or being referred to as my name written in capital letters with the last name - - -

SOLOMON J: I – if that's the basis of the objection, Mr Matic, I'm quite sure we can cure that and have your name un-capitalised, if that's what you would prefer. Would that solve the problem that you presently have?

MATIC, MR: I couldn't because it has been granted already against a different entity that's not me.

SOLOMON J: It's a different entity that's not you because it's spelt in capitals?

MATIC, MR: Because it's against a person. Under common law - - -

SOLOMON J: Yes.

MATIC, MR: - - - there should be – there is no crime committed. There is no victim here. So I'm not sure - - -

SOLOMON J: No one has suggested you committed a crime, Mr Matic. That is not the nature of the orders that I have made. There's no – there's – not only have I not made orders that suggest you have committed a crime, the plaintiff hasn't even suggested that you have committed a crime. That is not the basis of the orders.

MATIC, MR: Then what is the basis of the orders? And what is the order? Because I don't even know what the order is, to be honest.

SOLOMON J: Well, the orders are – they're set out in the papers that the plaintiff's lawyers have given you. Essentially, you can't do – attend the home opens and - - -

MATIC, MR: I never set out – I don't understand how someone can tell me what I can and can't do as a living

person. What governing power do they have to restrict me and my activities, expressions and speech? You can't tell someone they can't go around telling the truth just because you want to protect your lies. So I don't understand what – I mean, if they've (indistinct) contacted me and responded to something that I said months ago instead of trying to flip and try use the court to gain an advantage against someone that is obviously that is obviously quite disadvantaged by this whole process financially, it's an abuse of court process. So - - -

SOLOMON J: Yes. Well, tell you what, Mr Matic. I understand that you object to the orders that have been made. I need to be clear that as a matter of law, those orders do apply to you, whether they're – the name is spelt with capitals or without capitals. Those laws apply to you as a living man. That is, the orders I made on Friday are applicable to you. You need to appreciate that.

MATIC, MR: I respect that, your Honour.

SOLOMON J: Okay.

MATIC, MR: I'm just trying to understand what laws and what the actual - - -

SOLOMON J: Okay. So the laws essentially are that the Supreme Court has the power to make laws that govern people's behaviour. In circumstances such as this where there hasn't been an opportunity for both parties to be heard, the court only makes interim orders and then gives people the opportunity to sort it out properly. Now, you say that you didn't make the threats that you're alleged to have made and you're not – I take it you're not intending to do the things that I have told you you can't do.

MATIC, MR: No.

SOLOMON J: In which case it seems to me that you will have no difficulty complying with the orders.

MATIC, MR: No. No, your Honour. It's just more the mental pressures of actually having to deal with this matter on top of all the other things that were going on. I would propose to my friend that we do an undertaking, which I am happy to sign.

SOLOMON J: Okay.

BENNETT, MR: And - - -

SOLOMON J: All right. Well, I think that would be very sensible if you could discuss that with plaintiff's lawyers, because one way we can solve this is for you to give a written undertaking to the court. It would have to be an undertaking to the court, I suspect. And if you were to discuss that with the plaintiff's lawyers, then that may resolve the matter, at least for the time being. That's a very sensible suggestion, so thank you for that.

What I'm minded to do is this. I will adjourn the matter today without making any orders. That will mean that the orders I made on Friday will continue for the time being. That will give you an opportunity to discuss with the plaintiff's lawyers a resolution whereby you can give the undertaking to do the things that you say you weren't going to do anyway. And then that may – that may resolve the matter and we can – and we can then move on.

Alternatively, if that doesn't resolve the matter and you want some time to put your version of events into an affidavit, you can let the plaintiff's lawyers know how long you need to do that and – and let – and the plaintiff's lawyers will then – they know how to contact the court and copy you into everything. And I will give you time to do that and then we can come back and work out then how it should be resolved with you given – you being given the opportunity to have your version of the events put before the court.

So they're really the – so that's really what I'm suggesting. Today, we will adjourn. The orders that I made on Friday will continue for the time being. You will have an opportunity to discuss with the plaintiff's lawyers whether you can give an undertaking that would resolve the matter. And if you can't, then work out how much time you need to put your version of events before the court in an affidavit and then we can find a time to come back and sort it out. Would you be happy with that, Mr Matic?

MATIC, MR: That sounds reasonable, your Honour.

SOLOMON J: Yes, thank you. I appreciate that. Mr Bennett, is that satisfactory to you – that course?

BENNETT, MR: Yes. So should your Honour fix a date in time to come back, just so that we don't drift.

SOLOMON J: Yes, I think that might be a good idea one way or another. That means, Mr Matic, I will fix a date, and if it's all resolved by then, you can all let me know and

we needn't proceed, but if it isn't resolved, then you can come back before me and I will see where it's up to. The other thing I might say, Mr Bennett, is I'm quite happy to go to try and find you a registrar if – if a mediator, a court registrar, will assist, please let me associates know and we will try and find one at short notice.

BENNETT, MR: Thank you, your Honour.

SOLOMON J: All right. Today is the 14th. If I list this for next Monday – it's Monday afternoon at, say, 3.30 – let me just check with my associate. Monday afternoon, so that's Monday the 21st at 3.30 pm. What I will do is I won't – I will list it then again just for a health check just to see where we're up to in your discussions. It won't necessarily be the case that you have to have got all your papers together by then; that's just to see where we're up to.

BENNETT, MR: Yes.

SOLOMON J: Okay? Is that suitable?

BENNETT, MR: That's convenient.

SOLOMON J: Yes. Thank you.

MATIC, MR: Would I be able to make an application to appear by telephone?

SOLOMON J: Yes, that's – if you could just – when I – when we adjourn this matter, if you could have a word with my associate - - -

MATIC, MR: Sure.

SOLOMON J: - - - and sort out with them how you could be contacted, I'm happy to accommodate that.

MATIC, MR: Thank you.

SOLOMON J: Is there a difficulty with you appearing in person?

MATIC, MR: Yes, I have child so I've got to find someone to look after the child and then - - -

SOLOMON J: You've got some childcare responsibilities.

MATIC, MR: Yes.

SOLOMON J: I understand. Okay. Well, 3.30, then, on 21 February. If you've sorted it out by then, and you don't need that appearance to proceed, the parties can simply let my associate know.

MATIC, MR: Sure.

SOLOMON J: All right. Is there anything else you wanted to raise with me, Mr Matic?

MATIC, MR: Is it possible to get a transcript of today's - - -

SOLOMON J: Of today?

MATIC, MR: Yes.

SOLOMON J: Yes, I'm sure that's possible, and we can – I'm not sure exactly how that works, but in the usual course, that should be possible.

MATIC, MR: Great. Thank you.

SOLOMON J: So just to be clear, Mr Matic, the only order I will make today is that the matter be relisted for 3.30 pm next Monday, 21 February. In the interim, the orders that I made last Friday will continue. They – I need to be clear that, in the court's view, they apply to you, and l over the next week, you will either resolve the matter entirely or sort out a timetable for you to be given the opportunity to put your version in full before the court so that we can determine it more fulsomely.

MATIC, MR: Would it be possible to get a print-out of just the page with the orders, because I got given 100 documents. I literally could not find it in there.

SOLOMON J: Yes.

BENNETT, MR: I can do that.

SOLOMON J: Yes. Thank you, Mr Bennett. You can get that from Mr Bennett.

MATIC, MR: Sure.

SOLOMON J: And any difficulty, you can let – you will have the contact details for my associate, and you can also get that from the court at any time.

BENNETT, MR: The additional order your Honour should make is costs reserved.

SOLOMON J: Yes. Costs of today is reserved. That means I'm not making – who pays the costs of today we will decide another time because it might all depend on whether it gets resolved or what happens in the future.

MATIC, MR: Well, I believe it should be the applicant.

SOLOMON J: Yes. It may well be the applicant in the end, or it may not be, but I'm not in a position to decide that today.

MATIC, MR: Sure.

SOLOMON J: Very well. Anything else, Mr Matic, at this stage?

MATIC, MR: No, your Honour.

SOLOMON J: Thank you. Mr Bennett?

BENNETT, MR: No. May it please the court.

SOLOMON J: Thank you. We will adjourn.

AT 11.02 AM THE MATTER WAS ADJOURNED UNTIL
MONDAY, 21 FEBRUARY 2022

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